To: Anderson, Neil[Anderson.Neil@epa.gov]
From: Bloomberg BNA
Sent: Mon 3/27/2017 7:55:25 PM
Subject: March 27 -- Daily Environment Report - Afternoon Briefing

Daily Environment Report

Afternoon Briefing - Your Preview of Today's News

The following news provides a snapshot of what Bloomberg BNA is working on today. Read the full version of all the stories in the final issue, published each night. The Bloomberg BNA Daily Environment Report is brought to you by EPA Libraries. Please note, these materials may be copyrighted and should not be forwarded outside of the U.S. EPA. If you have any questions or no longer wish to receive these messages, please contact Josue Rivera-Olds at rivera-olds.josue@epa.gov, 202-566-1558.

Diesel Vehicle Owners Eager for $1B VW Settlement: Court Filing

Posted March 27, 2017, 03:30 P.M. ET

By Patrick Ambrosio

Owners of premium diesel vehicles sold by Volkswagen are eager to participate in a $1 billion settlement over the company's emissions-cheating scandal, a recent court filing shows.

Volkswagen is currently engaged in a massive effort to buy back hundreds of thousands of 2.0-liter diesel engines, including the VW Passat and Golf, equipped with illegal software that allowed them to pass emissions tests despite polluting more than allowed under normal driving conditions. While more than 130,000 VW owners have already sold back their cars, owners of larger 3.0-liter diesel engines are still waiting for their chance.

Consumer buy-in for the settlements, which will require the automaker to either buy back or offer free repairs for affected vehicles, is seen as an important factor in actually getting over-emitting VW diesels off the road. The settlement calls for Volkswagen to offer to repurchase the vehicles at pre-scandal values, plus pay thousands of dollars in additional compensation, for any that cannot be brought into compliance with nitrogen oxides standards.

The settlement for the 3.0-liter vehicles, including the VW Touareg and Porsche Cayenne, hasn't been approved yet: a final hearing is scheduled for May 11. But consumer class attorneys said in a March 24 filing that more than 62,000 3.0-liter owners and lessees have registered their vehicle identification number on the settlement website in order to receive more information (In re Volkswagen "Clean Diesel" Mktg., Sales Practices and Prod., N.D. Cal., No. 15-md-2672, motion filed 3/24/17).

That number, which represents more than 75 percent of the eligible 3.0-liter vehicles, illustrates "a noteworthy level of engagement" given that the VW owners will have until 2019 to register for the settlement, the plaintiffs' attorneys said.

Volkswagen also is making progress on implementing the $14.7 billion settlement that covered the

2.0-liter diesels, which is good for the company's bottom line and to the environment. That settlement requires the automaker to buy back or repair 85 percent of those vehicles by June 30, 2019. If VW misses that target, it would need to pay $85 million for every percentage point it falls short into an environmental remediation fund intended to offset the pollution caused by those vehicles.

As of Feb. 18, Volkswagen had reclaimed more than 130,000 diesels, or more than 28 percent of eligible vehicles, according to the most recent status report filed with the court. The company said it is completing about 15,000 buybacks per week and is expected to continue with that pace "for the foreseeable future."

Monsanto Appeals to Block California's Roundup Cancer Listing

Posted March 27, 2017, 01:44 P.M. ET

By Tiffany Stecker

Monsanto Co. has appealed a California court decision to allow the state's environmental health office to proceed in listing the company's signature Roundup weedkiller as a carcinogen, as scientific debate churns over the chemical's cancer potential.

The company filed an appeal March 22 of the California Superior Court for Fresno County's decision earlier this month to dismiss Monsanto's complaint against the Office of Environmental Health Hazard Assessment's intention to list glyphosate under California's Proposition 65 law, which discloses carcinogenic substances to the public (Monsanto v. OEHHA, Cal. Super. Ct., 16CECG00183, 3/22/17).

The appeal is not surprising. Monsanto has been fighting claims for decades that the main ingredient in Roundup—glyphosate—is linked to cancer. The battle intensified two years ago, when the World Health Organization's International Agency for Research on Cancer deemed the chemical a "probable" carcinogen after a review of the scientific literature and other studies.

Several regulatory agencies, including the Environmental Protection Agency, say that glyphosate is not likely to be carcinogenic to humans. The European Chemicals Agency also found in March that it is not carcinogenic, opening the way for its continued use in the European Union.

"The agency's flawed and baseless proposal to list glyphosate under Proposition 65 not only contradicts California's own scientific assessment, but it also violates the California and U.S. Constitutions. We disagree with the Court's ruling, and we will continue to fight the decision on the basis of sound science and the law," Monsanto spokeswoman Charla Lord told Bloomberg BNA in an email.

First Constitutional Challenge

The complaint is the first constitutional challenge to the regulations for implementing the "labor code" listing process under the 1986 Proposition 65 law. The process allows OEHHA to list hazardous chemicals identified in Labor Code Section 6582 as well as substances that the International Agency for Research on Cancer has classified as human or animal carcinogens.

Monsanto and intervenor plaintiff California Citrus Mutual—which represents 2,500 citrus growers in the state—failed to state facts sufficient to constitute a cause of action, according to Superior Court Judge Kristi Culiver Kapetan's Jan. 26 tentative ruling. A final ruling in the case was issued March

10.

OEHHA spokesman Sam Delson told Bloomberg BNA that the agency is “hopeful that the appeals court will affirm that ruling.”

More than 40 plaintiffs sued in a separate California Superior Court last week claiming that Roundup caused their non-Hodgkin’s lymphoma, a relatively common type of cancer. The company is also fighting litigation in federal court in which more than 70 plaintiffs across the U.S. make similar claims based on the 2015 IARC finding.

Scientists on the EPA’s Scientific Advisory Panel are generally in agreement that glyphosate does not cause solid tumors, Hodgkin’s lymphoma or leukemia. But the scientists are split on whether the chemical can be linked to non-Hodgkin’s lymphoma, according to a recent report from the panel.

Canada Proposes Toxic Designation for Cosmetic Ingredient

Posted March 27, 2017, 02:38 P.M. ET

By Peter Menyasz

Canada proposed designating as toxic an ingredient used in makeup and foot lotions, which could lead to its prohibition in the country.

A draft screening assessment of 2-ethylhexyl-2-ethylhexanoate found that its use as an emollient in foot lotions and makeup poses a risk to human health due to potential harm to the liver and developmental effects, the government said March 25 in a notice in the Canada Gazette, Part I.

A separate draft risk management document proposed consideration of adding the chemical to Health Canada’s Cosmetic Ingredient Hotlist, which includes substances whose use is prohibited or restricted, as well as potential application of the significant new activity notice requirements of the Canadian Environmental Protection Act.

The draft screening assessment and risk management document are open to public comment through May 24. The government said it expects to publish final documents by March 2018.

Impact Unclear

The government gave no indication of what companies could be affected, or how widely the chemical is used in makeup and lotions.

The Chemistry Industry Association of Canada had no immediate comment, W. Scott Thurlow, legal counsel and director of chemicals management, told Bloomberg BNA March 27 in an email.

And the Canadian Cosmetic, Toiletry and Fragrance Association did not respond to a request for comment.

The chemical, also known as 2-ethyl-hexanoic acid, 2-ethylhexyl ester, is not known to be manufactured in Canada or imported in quantities above the 100-kilogram reporting threshold for significant new activity notification, the government said.

A draft assessment also found that calcium 2-ethylhexanoate, also known as 3-ethylhexanoic acid, calcium salt, doesn't meet any toxicity criteria and therefore requires no regulatory action. The chemical is primarily used as an additive in interior and exterior paints, but is also used to manufacture food packaging materials.

California's Clean-Air Problem Is a Lot Bigger Than Just Trump

Posted March 27, 2017, 10:20 A.M. ET

By John Lippert, Joe Ryan and Mark Chediak

No state is tougher on dirty air than California. How tough? So tough that, if trends hold, it may fall short of its own goals.

As President Donald Trump moves to roll back decades worth of regulation, the Golden State has positioned itself as America's bulwark of environmental protection. The reality behind that is complex, and not only because the Trump administration has signaled it wants to put the brakes on California's climate-change fight. A chorus of skeptics is warning a new state objective— to slash greenhouse-gas emissions by 40 percent from 1990—could simply be out of reach, no matter what Washington does.

Time is short: A law Governor Jerry Brown signed in September allows just 13 years to get there.

"Is it physically possible for California to meet its goal? Yes," said James Sweeney, director of Stanford University's Precourt Energy Efficiency Center. "Is it economically likely? No."

Even if power plants, ports, farms and factories continue to reduce toxic output, there's little chance of hitting the target without an explosion in green cars and trucks. Fewer than 4 percent in California are zero-emission or plug-in hybrids now, and only because state rules demand it. To get to the 2030 mark, the share may well have to grow tenfold, with an emphasis on electric models like those from Tesla Inc. And no automaker has made selling so-called EVs a reliably profitable business.

"There is not a natural level of EV demand that is anywhere close to what California is seeking," said Eric Noble, president of the CarLab, a product-development consulting firm, who has called state policies "a train wreck."

California regulators and politicians hardly see it that way, pointing to technological advances that are cutting alternative-car production costs and a flood of new no-emission models coming down the pike. Anyway, they don't pretend what they're trying to do could be accomplished naturally, without government intervention.

That was the clear message last week, when the powerful California Air Resources Board voted unanimously to maintain strict tailpipe-emissions limitations and set the stage to begin drafting rules to significantly raise the green-vehicle mix bar for the industry.

"We've made incredible strides in improving the air quality, in improving mileage efficiency, not just for California but for Americans," said state Senate President Kevin de Leon, a Democrat. This hasn't happened because of private-sector decisions; "it's because of policy."

For almost two decades, automakers have had to market some nonpolluting cars and trucks to avoid paying big fines to the state. As it is, companies have until 2025 to make 15 percent of sales either plug-in hybrids like Toyota Motor Corp.'s Prius Prime or cars powered by batteries or fuel cells. The new regulations CARB is writing may boost that—to 40 percent by 2030.

With incentives and restrictions, the state is confident it can make the mark, said CARB Chairman Mary Nichols. “We have the technical and legal ability.”

The last part is true for now. Trump—who has called California “out of control”—may go after the state’s special authority under the 1970 Clean Air Act to make its own pollution and greenhouse-gas rules. The wavier allows other states to adopt the California doctrine; nine have, and all told they make up close to 30 percent of the U.S. car market.

A White House official said a decision on the waiver will come after a review the president has ordered of the stringent national fuel-economy and emissions standards that Barack Obama set and the industry asked a receptive Trump to loosen.

De Leon said the expectation is that Washington will move to revoke the state’s privilege. “Then we’ll see each other in court.”

California—which accounts for one in every eight U.S. vehicle sales—has long led the clean-air charge. Facing the nation’s worst smog problem, it began enacting anti-pollution laws in 1959. The first comprehensive measure to combat climate change came in 2006, under Republican Governor Arnold Schwarzenegger.

Enterprises across the state, from oil wells to dairy farms, faced new restrictions. And carbon emissions fell. They totaled 445 million metric tons of CO2 equivalent in 2010, beating the Schwarzenegger law’s target for that year of 465.9 million, the level in 2000. In 2014, the last year for which CARB has released data, the number was 441.5 million, showing progress toward the law’s 2020 goal of getting to 431.5 million, the 1990 level.

The statute signed by Brown, a Democrat, moved the goalposts way out: Emissions will have to plummet to 260 million. C02 warriors insist this can happen by the end of 2030. “What we are going to do in California in the next few years will be transformational,” de Leon said.

That’s the mantra—no matter the current lackluster sales of most green vehicles. When General Motors Co. began selling its Bolt EV in December, it expected to lose $9,000 on each one, people familiar with the situation said. To unload its Leaf electric model, Nissan Motor Co. has had to give discounts worth just over half the $36,000 sticker price, according to TrueCar Inc. analyst Eric Lyman. Nissan declined to comment, except to say government rebates have helped make the Leaf the top-selling EV worldwide.

The industry is making some strides that could put EVs on equal footing with gas guzzlers in manufacturing. Battery-cell costs, for instance, have fallen to the point that they’re no longer an impediment to mass adoption, according to Sam Jaffe of Cairn Energy Research Advisors.

And Jaffe is bullish about California—short-term. He said zero-emission vehicle penetration could hit 22.1 percent by 2025. Getting to 40 percent in the state in the five years after that will be a slog. It’ll be even more difficult in the nine states that follow California’s lead; their residents are buying ZEVs at a fifth of the Golden State’s rate, according to IHS Markit.

The good news for California’s chances to hit its target is that some companies are ramping up. Tesla has pledged to quintuple production to 5,000 electric cars a week by the end of the year. Volkswagen AG predicts EVs will make up a quarter of sales by 2025. Toyota plans to rid its lineup of almost all combustible-engine products by 2050. Chinese companies are hustling; that country, grappling with crippling air pollution, is boosting EV requirements and incentives in a new-vehicle market that's already 55 percent bigger than America's.

Outside the U.S., governments that see carbon pollution as a threat are intensifying pressure on automakers. They recognize what the future holds. "Everybody wants to see vehicle electrification succeed," said Robert Bienenfeld, assistant vice president for environmental and energy strategy at Honda Motor Co., "because it's the global long-term trend."

The trick for California is to compel it into a very short-term one.

Trump Said to Issue Far-Reaching Reversal of Obama Climate Push

Posted March 27, 2017, 9:53 A.M. ET

By Jennifer A. Dlouhy

President Donald Trump is set to sign a sweeping executive order March 28 aimed at promoting domestic oil, coal and natural gas by reversing much of his predecessor's efforts to address climate change.

The document lays out a broad blueprint for the Trump administration to dismantle the architecture that former President Barack Obama built to combat the phenomenon, according to details shared with Bloomberg News. Some of the changes will happen immediately, while others will take years to complete.

The order will compel federal agencies to quickly identify any actions that could burden the production or use of domestic energy resources, including nuclear power, and then work to suspend, revise or rescind the policies unless they are legally mandated, are necessary for the public interest or promote development.

It also will toss out two Obama-era directives that gave climate change a prominent role in federal rule making. One advised government agencies to factor climate change into environmental reviews, such as those governing where oil drilling could take place. The other, called the "social cost of carbon," is a metric reflecting the potential economic damage from climate change that the Obama administration used to justify a suite of regulations.

Pro-Growth

"This is about making sure that we have a pro-growth and pro-environment approach to how we do regulation in this country," Scott Pruitt, head of the Environmental Protection Agency, said on ABC's "This Week" program March 26.

Trump, who has called climate change a hoax, has vowed to reorient the government so that U.S. oil and coal producers thrive and steel and auto manufacturers don't face "job-killing restrictions." The coming order underscores Trump's commitment to make good on his campaign promises, which helped propel him to victory in industrial strongholds such as West Virginia and Pennsylvania.

The details shared with Bloomberg News reflected the latest draft of the White House order and could change before the announcement, which Pruitt said would happen March 28.

While the order will make clear that the target of the planned regulatory rollback should be policies curbing the production of oil, natural gas, coal and nuclear energy, it also will say the U.S. is well served when affordable, reliable and clean electricity is produced from an array of sources, including solar, wind and hydropower.

The order also is set to include a targeted assault on a handful of specific Obama-era regulations. It will require the Interior Department to lift a moratorium on the sale of new coal leases on federal land and compel the EPA to review, and, "if appropriate," begin proceedings to suspend, revise or rescind regulations designed to reduce greenhouse gas emissions from power plants.

Clean Power Plan

Obama's Clean Power Plan was designed to cut carbon dioxide emissions from electricity by 32 percent by 2030 compared to 2005 levels. The initiative has been in legal limbo since the Supreme Court stayed it while it was reviewed by a federal appeals court. The Trump administration now is expected ask that court to put the matter on hold to allow it time to revise or undo the measure—an action environmentalists have vowed to challenge.

Other policies in the crosshairs: an EPA rule setting requirements for greenhouse gas emissions for construction of new power plants and an Interior Department regulation setting mandates on hydraulic fracturing of oil and gas wells on federal lands. The Interior Department's Bureau of Land Management said earlier this month that it will begin the process to rescind the regulation, which requires companies to disclose the chemicals they pump underground and to seal off wastewater in storage tanks.

Revoking Directives

Trump's executive order also is set to revoke six specific directives from his predecessor, including Obama's broad strategy for paring emissions of methane released from oil and gas operations. Other Obama directives targeted for repeal include one on climate change and national security, as well as a pair of directives from June 2013 that laid out his climate plans.

The Obama administration wove climate considerations into decisions across the federal bureaucracy, from efficiency standards for microwave ovens to the refurbishing of government buildings.

Coal Market

The changes may have little immediate impact on the market for coal, which is facing stiff competition from cheaper natural gas and renewable energy, analysts said.

Even before the Obama administration imposed the coal-leasing moratorium in January 2016, producers had little interest in adding new federal reserves to their portfolios amid slumping domestic demand. The U.S. government has sold just one coal leases since October 2012, though earlier this month it approved a transaction originally sought in 2005. Existing federal leases contain at least 20 years' worth of coal, according to Interior Department estimates.

Even without the EPA's Clean Power Plan in force because of the Supreme Court stay, using coal to generate electricity has been in decline as a result of previous pollution regulations and competition from low-cost natural gas, solar and wind.

Coal's Decline

The removal of the Clean Power Plan could halt coal's decline as a source of electricity during the next two decades, according to projections from the Energy Information Administration. More coal use would mean less natural gas use, EIA said.

Trump's action sets in motion at least a year of bureaucratic work at the EPA to formally dismantle the Clean Power Plan. And whatever happens will inevitably be challenged in court by those same environmental groups.

By contrast, the Interior Department can undo the coal leasing moratorium with the stroke of a pen, the same way it was imposed a year ago, under an administrative order issued by former Interior Secretary Sally Jewell.

Trump's targets also would reduce the role of climate change in government decision-making. For instance, the social cost of carbon metric served as the linchpin for many Obama administration environmental rules. Critics say the number—now nearly $40 for every metric ton of carbon dioxide emitted into the atmosphere—gives artificial precision to uncertain conditions nearly 300 years in the future.

According to shared details of the executive order, the Trump administration will disband the working group that created the social cost of carbon and return to an earlier 2003 approach for calculating the costs and benefits of proposed regulations.

—With assistance from Jennifer Jacobs.

Brazil Grasslands Not Always Greener, Study Finds

Posted March 27, 2017, 03:10 P.M. ET

By Michael Kepp

Brazil's Cerrado vast wooded grassland is projected to lose 31 percent to 34 percent of its remaining vegetation cover and 480 native plant species by 2050, according to a recent study from a scientific journal.

A perfect storm of agribusiness and infrastructure expansion, along with limited legal and conservation measures, "is set to trigger an extinction episode of global significance," said the study, published March 23 in Nature, Ecology & Evolution.

A government crackdown on illegal Amazon deforestation and a 2008 moratorium on buying soy grown on Brazilian Amazon areas deforested have pushed Brazil's agricultural frontier south into the adjacent and far-less-protected Cerrado. Only 7.5 percent of the Cerrado is safeguarded, compared to 46 percent of the Brazilian Amazon.

The savannah, which extends through nine north-central Brazilian states, has more than 4,800 plant and vertebrate species and includes three of the largest watersheds in South America.

The study's mass plant extinction scenario could be avoided if Cerrado ranchers boosted their use of the biome's cattle-grazing capacity from an average of 35 percent to 65 percent, along with complementary conservation policies like increasing protected areas, the report said. They then could lease this pastureland to soybean and sugarcane farmers, who would cultivate it instead of expanding into existing native vegetation.

In addition, landowner compliance with land restoration requirements (PRAs) in the revised 2012 Forest Code, Brazil's main woodlands protection law, could reduce projected Cerrado plant extinction by 83 percent if implemented in priority areas for biodiversity conservation, according to the study.

"Existing public policies, like PRA, as well private initiatives, like the soy moratorium, could help to avoid the projected collapse of Cerrado biodiversity if properly financed and implemented in a strategic and synergistic way," lead-author of the study Bernardo Strassburg, professor of sustainability science at the Pontific Catholic University in Rio de Janeiro, told Bloomberg BNA March 27.